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Taxpayer administers the payment of retirement and disability benefits for member police officers and firefighters employed by cities, towns and counties in State. Certain members disabled before July 1, 2000, were not eligible to establish a line-of-duty disability, and, accordingly, their disability benefits were not eligible for favorable tax treatment. The Legislature of State passed Act which added section 13.4 to Statute. Section 13.4 establishes a process by which affected members (or their survivors) may apply for a redetermination of whether their disability qualifies, on a prospective basis, as duty-related.

Section 13.4(b) of Statute provides that a member may apply to the local board that made the member's initial disability determination for a redetermination that the disability was incurred in the line-of-duty. Section 13.4(b)(1) describes the standards under which the member's disability qualifies as an injury in the line-of-duty. Under section 13.4(d), the local board shall make a recommendation within 30 days of the application or hearing if held. Section 13.4(e) provides that if the local board does not make a recommendation, the default recommendation for purposes of review shall be considered to be a determination that the disability was incurred in the line-of-duty.

Under section 13.4(f), Board reviews the local board's actual or default determination. If Board then fails to issue a determination within 45 days as to whether the member's disability was duty related, section 13.4(h) states that "the default determination on whether the covered impairment is one described under subsection (b)(1) will be the determination made by the [... Board's] medical authority." Taxpayer certifies that in every case where Board fails to make an actual determination within 45 days after receiving the local board's actual or default recommendation as described in section 13.4(d) or (e), Board's medical authority will issue a written determination as to whether the disability was incurred in the line-of-duty, as defined under section 13.4(b)(1) of Statute.

Section 104(a)(1) of the Internal Revenue Code states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include--(1) Amounts received under workmen's compensation acts as compensation for personal injuries or sickness... ."

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Accordingly, based on the representations made, and authorities cited above, we conclude that disability benefits paid under section 13.4 of Statute, to a member (or as a continuation benefit to a survivor) will not be considered gross income to the recipient under section 104(a)(1) of the Code. This ruling is prospective only, beginning as of the date there is an actual finding that a member's disability is duty-related under either section 13.4(f) or 13.4(h) of Statute.

No opinion is expressed or implied concerning the tax consequences under any other provision of the Code or regulations other than those specifically stated above.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Harry Beker  
Branch Chief, Health and Welfare Branch  
Office of Division Counsel/Associate Chief  
Counsel (Tax Exempt & Government Entities)